

**UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND**

KELLY BAXTER, an Individual

Plaintiff,

v.

C.A. No.:

CITY OF CENTRAL FALLS, by and through its Director of Finance, CYNTHIA DEJESUS; MAYOR JAMES DIOSSA, in his capacity as the Chief Executive of the City of Central Falls, DANIEL J. BARZYKOWSKI, in his capacity as the Chief of the City of Central Falls Police Department, OMAR OSPINA, individually and in his official capacity as an officer in the Central Falls Police Department, JOSEPH D. TOUGAS, individually and in his official capacity as an officer in the Central Falls Police Department,

Defendants.

COMPLAINT AND JURY TRIAL DEMAND

Introduction

This is an action for employment discrimination on the basis of sex in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, as amended (“Title VII”), the Rhode Island Civil Rights Act, R.I.G.L. § 42-112-1, *et seq.*, as amended (RICRA), the Rhode Island Fair Employment Practices Act, R.I.G.L. § 28-5-1, *et seq.*, as amended (“RI-FEPA”) and common law. Plaintiff Kelly Baxter, a former dispatcher with the Central Falls of Central Falls Police Department, was forced to endure a hostile work environment so severe and inhumane that it resulted in her discharge.

The Parties

1. Plaintiff Kelly Baxter (“Ms. Baxter”) is an individual who resides in Providence, Rhode Island.
2. Ms. Baxter is:
 - a. As to Title VII, an “employee” within the meaning of 42 U.S.C. § 2000e(f);
 - b. As to the RI-FEPA, an “employee” within the meaning of R.I.G.L. § 28-5-6(7).
 - c. As to RICRA, a “person” entitled to the protections of the Rhode Island Civil Rights Act, R.I.G.L. § 42-112.
3. Defendant City of Central Falls (“Central Falls”) is a municipal subdivision within the State of Rhode Island.
4. Defendant Central Falls is:
 - a. As to Title VII, Central Falls is an “employer” within the meaning of 42 U.S.C. § 2000e(b), and subject to the provisions of Title VII in its employment of employees, including Plaintiff.
 - b. As to the RI-FEPA, Central Falls is an “employer” within the meaning of R.I.G.L. § 28-5-6(8)(i) and subject to the provisions of the RI-FEPA in its employment of employees, including the Plaintiff;
 - c. As to RICRA, Central Falls is subject to the requirements contained within the Rhode Island Civil Rights Act, § 42-112, and subject to the provisions of RICRA in its employment of employees, including Ms. Baxter.
5. Defendant Central Falls Police Department (“CFPD”) is an administrative subdivision of Central Falls.

6. Defendant Mayor James Diossa (“Mayor Diossa” or “Mayor”) is Chief Executive of Central Falls. He is sued in his official capacity. Diossa, at all times relevant thereto, acted under color of state law.

7. Defendant Daniel Barzykowski (“Major Barzykowski”) is currently Chief of the CFPD. He is sued in his official capacity. Barzykowski, at all times relevant thereto, acted under color of state law.

8. Defendant Omar Ospina (“Officer Ospina” or “Ospina”) is currently a detective in CFPD. He is sued in his individual and official capacity. Officer Ospina, at all times relevant thereto, acted under color of state law.

9. Defendant Joseph D. Tougas (“Sergeant Tougas” or “Tougas”) is currently a Lieutenant in the CFPD. He is sued in his individual and official capacity. Lieutenant Tougas, at all times relevant thereto, acted under color of state law.

10. Defendant Cynthia DeJesus is Director of Finance for the Central Falls. She is sued in her official capacity.

Jurisdiction and Venue

11. Jurisdiction is proper in this Court because this action is brought to remedy discrimination on the basis of sex in the terms, conditions and privileges of employment and to remedy retaliation against an employee for activity protected under Title VII, all in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e *et seq.*, as amended (“Title VII”), the Rhode Island Civil Rights Act, R.I.G.L. § 42-112-1, *et seq.*, as amended (RICRA), and the Rhode Island Fair Employment Practices Act, R.I.G.L. § 28-5-1, *et seq.*, as amended (“RI- FEPA”). The Court has jurisdiction pursuant to 28 U.S.C. § 1331 (Federal Question), § 1343 (Civil Rights and Elective Franchise), and 28 U.S.C. § 1367 (Supplemental Jurisdiction).

12. Venue is proper within the District of Rhode Island pursuant to 28 U.S.C. §1391(b) because all parties reside in Rhode Island and the nexus of events giving rise to the cause of action occurred in Rhode Island.

13. Ms. Baxter has taken the following administrative actions prior to this suit:

a. As to the RI-FEPA: Ms. Baxter filed a claim of sex discrimination before the Commission on Human Rights of the State of Rhode Island (“RICHR”), pursuant to the RI-FEPA, HRC # 18ESH265-06/01, on or about April 17, 2018, was issued a Notice of Right to Sue thereon by said Commission dated June 27, 2019, and has timely instituted suit thereon.

b. As to Title VII: Ms. Baxter filed a claim of sex discrimination before the Equal Opportunity Commission of the United States (“EEOC”), EEOC # 16J-2018-00208, on or about April 19, 2018, pursuant to Title VII, was issued a Notice of Right to Sue thereon by the EEOC dated August 14, 2019, and has timely instituted suit thereon.

Facts

14. Ms. Baxter commenced work as CFPD dispatch officer on November 23, 2011. Ms. Baxter’s primary duties were to dispatch police and fire personnel.

15. CFPD is a division within the Central Falls Department of Public Safety. As Director of Public Safety, the Mayor directly oversees CFPD. The Dispatch Division is located within CFPD at 160 Illinois Street, in Central Falls.

16. At all times material hereto, the Dispatch Division has been staffed predominantly, and often exclusively, by women.

17. During the course of her employment, Ms. Baxter was subjected to severe and pervasive sexual harassment, a hostile work environment and retaliation based on her sex and complaints about working conditions at CFPD. The nature of the intolerable conditions she and her fellow dispatchers endured, generally, and the persistent pattern of harassment directed at her,

specifically, was so extreme that it resulted in her discharge. The details of the harassment, hostile work environment and retaliation she faced are set forth below.

Assault and Harassment by Officer Ospina

18. In September of 2011, Officer Ospina sexually assaulted Ms. Baxter. He acknowledged the assault by apologizing to Ms. Baxter through the CFPD's internal email system.

19. Ospina subsequently acquired Ms. Baxter's personal cell phone number from the CFPD employee directory. Over the course of her employment, Ospina frequently sent text messages to Ms. Baxter while he was inebriated. These unwelcome messages would often involve remarks about Ms. Baxter's "sexy" voice or appearance, invite her to go out drinking with him alone or invite himself over to Ms. Baxter's home.

20. In the summer of 2015, Ms. Baxter observed Ospina urinating on a dumpster outside of her upholstery studio, located in Lincoln, Rhode Island. On information and belief, he had no reason to be there. Ms. Baxter notified a CFPD supervisor of the incident. No action was taken.

Harassment by Sergeant Tougas

21. At all material times, Sgt. Tougas was one of Ms. Baxter's supervisors.

22. Sgt. Tougas frequently sent text messages to Ms. Baxter, while they were on duty, with unwelcome sexually suggestive comments about Ms. Baxter's appearance, invite her to go out drinking with him alone or invite her to his home when his wife was away.

23. In 2012, Sgt. Tougas invited Ms. Baxter to go out drinking with him. Ms. Baxter responded that she did not want to go to "townie" bars. Sgt. Tougas responded that she must want to go to bars in Providence where the clientele was Black men and stated that she had a sexual preference for Black men.

24. Over the course of her employment, Sgt. Tougas frequently stated that Ms. Baxter preferred the genitalia of Black men. He and other CFPD officers would also made comments to Ms. Baxter about this supposed preference using a pejorative term. On at least one occasion Sgt. Tougas remarked about Ms. Baxter fantasizing about Black men.

25. Between May and July of 2012, Sgt. Tougas made inappropriate remarks about Ms. Baxter on Facebook, claiming that a shirt she was wearing was see-through and permitted him to see her bra. Sgt. Tougas began to refer to it as his “favorite shirt.”

26. Sgt. Tougas frequently made sexually suggestive comments about the appearance of Ms. Baxter’s breasts.

27. In or around the Summer of 2012, Sgt. Tougas told Ms. Baxter that she was “playing with her [breasts]” and she was causing another officer to become sexually aroused.

28. On approximately five (5) to ten (10) separate occasions during the course of Ms. Baxter’s employment, Sgt. Tougas would take the plastic discs affixed to the corners of the dispatcher cubicles and attempt to hit Ms. Baxter in the chest with them.

29. In 2013, Sgt. Tougas nicknamed Ms. Baxter’s boyfriend “Tyrone,” with the implication that “Tyrone” was a stereotypical Black name.

30. From 2013 onwards, when the Central Falls detained an African American individual, Sgt. Tougas would frequently remark that the prisoner was Ms. Baxter’s “type.”

31. On one occasion, Sgt. Tougas referred to his police baton as “n***** beating stick.”

32. In or about March of 2013, Sgt. Tougas’ wife became aware of her husband’s text and Facebook messages to Ms. Baxter. Upon her discovery of the communications, she accused Ms. Baxter of being a “homewrecking b*tch” via Facebook messenger. Sgt. Tougas “unfriended” Ms. Baxter shortly thereafter.

33. In or about August of 2013, Ms. Baxter asked Sgt. Tougas for permission to use the bathroom. Sgt. Tougas became aggravated, instructed Ms. Baxter to call an officer off the road to cover for her and informed her that he was busy and did not have to cover her post because he was a sergeant. Ms. Baxter was upset and humiliated. A fellow dispatcher finally relieved Ms. Baxter 1-2 hours after her initial request.

34. On or around November 20, 2013, Sgt. Tougas stated to Ms. Baxter that a fellow CFPD officer had a preference for urinating on women. He repeated this statement on several occasions over the course of Ms. Baxter's employment.

35. On or around December 4, 2013, Sgt. Tougas invited Ms. Baxter to his house when his wife was away. Ms. Baxter refused the invitation.

Harassment by Other CFPD Officers

36. During the Summer of 2016, and in the presence of a new female dispatch trainee, CFPD then-Lieutenant Craig Horton refused to allow Ms. Baxter to leave her shift early unless she showed him what she was wearing.

37. In the weeks prior to a sexual harassment training in February of 2017, certain police supervisors, including (now) Captain Horton, stated that that everyone would be "in trouble" if anyone made a sexual harassment complaint against an individual within the CFPD.

38. During the February 2017 sexual harassment training, police officers were openly laughing, joking, and whispering audibly sexually comments.

39. In Fall of 2017, while Ms. Baxter was in the CFPD lunchroom speaking with other CFPD employees, Sgt. Frank Rodriguez interrupted her by saying "that she needed to get f****d really good."

40. During the course of her employment, Ms. Baxter was physically assaulted by other CFPD officers. Specifically, Officer Viens struck Ms. Baxter on the buttocks; Officer Viens snapped Ms. Baxter's bra strap; and Sgt. Rodriguez pulled Ms. Baxter toward him by her hair.

41. Ms. Baxter tolerated the harassment because she feared that complaining or acting as if anything bothered her would be ineffective and only invite more harassment.

The Dispatch Work Environment

42. During the course of her employment, Ms. Baxter and other female dispatchers were frequently prevented from taking bathroom breaks.

43. During the course of her employment, Ms. Baxter and other female dispatchers were often not afforded meal breaks. When Sgt. Tougas was the officer in charge, he would frequently exclude dispatchers from the meal order.

44. During the course of Ms. Baxter's employment, the dispatch room suffered from a faulty HVAC system which provided inadequate airflow. Ms. Baxter and other female dispatchers complained of respiratory ailments as a result. Despite Ms. Baxter's complaint, defendants failed to remediate these conditions.

45. In May of 2017, dispatchers were informed that they were no longer permitted to accrue or use their compensatory time.

46. In June of 2017, the dispatchers filed a complaint about compensatory time. In retaliation, Major Barzykowski ordered the door between dispatch area and the supervisors office closed, further cutting off airflow to the dispatchers' room.

47. The carpet in the dispatch room was soiled with urine stains and the dispatch room was plagued with cockroach and rodent infestations. The issue was exacerbated by the fact that, due to deliberate chronic understaffing, dispatchers were forced to eat their meals at their desks. Ms.

Baxter and other dispatchers took photographs of the infestation and complained, but defendants failed to remediate the situation.

48. During the course of Ms. Baxter's employment, dispatchers were not afforded the same educational and training opportunities as other officers within the CFPD.

49. During the course of Ms. Baxter's employment, dispatch employees were not permitted to park in the CFPD parking lot.

50. During the course of Ms. Baxter's employment, dispatch employees were not permitted to use their cell phones.

51. During the course of Ms. Baxter's employment, dispatchers were routinely asked to deflect phone calls from male officer's wives. For example, Officer Ospina directed Ms. Baxter to tell his wife that he was out at a fire when he was at a bar.

52. During the course of Ms. Baxter's employment, Sgt. Tougas would comment on the smell or the temperature of the dispatch room, stating that it smelled "moist" or that Ms. Baxter or the other female dispatchers were "stewing in their own juices." He would also refer to the room as "swampy" and "musty."

53. During the course of Ms. Baxter's employment, Sgt. Tougas referred to dispatchers as "hyenas;" a pejorative term suggesting that dispatchers unreasonably complained about their working conditions and were hysterical.

Complaints Made Regarding Hostile Work Environment and Harassment

54. According to CFPD policy, dispatchers were expected to report acts of harassment to a supervisor or CFPD official. Defendants failed to make available a reporting mechanism outside CFPD. During the course of Ms. Baxter's employment, CFPD officials were made aware of and participated in sexual harassment but failed to remedy or prevent it.

55. On or about September 25, 2013, Ms. Baxter complained about Sgt. Tougas's refusal to provide her with a bathroom break. On September 27, 2013, Ms. Baxter attended a meeting at City Hall to discuss the issue. Both CFPD Chief Mendonca and the Mayor's Chief of Staff were present. Defendants failed to remedy the situation.

56. In or around September of 2015, Ms. Baxter complained to her supervisor, Sgt. Rave, that Sgt. Tougas had made inappropriate sexual remarks to another female dispatcher. Sgt. Rave was in fact present during the remarks. Sgt. Rave refused to address the complaint because she felt it would be ineffective.

57. On September 19, 2015, Sgt. Rave sent a text message to Ms. Baxter asking if she had warned the new female dispatcher about Sgt. Tougas's inappropriate sexual behavior in order to make the new dispatcher aware of the nature of the work environment and discourage her from complaining about harassment.

58. To the best of Ms. Baxter's knowledge, Sgt. Rave failed to take action on any of her reported claims of harassment.

59. In May of 2017, Ms. Baxter met with the Central Falls Human Resources Director to complain about the compensatory time issue. Ms. Baxter and her Union representatives stated that dispatchers were being treated differently on the basis of sex, and specifically complained that female dispatchers were being called hyenas. The Human Resources Director stated that the term "hyena" was one of the "PG rated" instances of gender discrimination that dispatchers had to endure. Defendants failed to address the discrimination aspect of the complaint.

60. In July of 2017, Ms. Baxter met with Mayor Diossa, Central Falls Solicitor Mathew Jerzyk and Chief of Staff Josh Giraldo to complain that female dispatchers were treated

differently than male-majority divisions of CFPD with regard to compensatory time.

Defendants failed to address the discrimination aspect of the complaint.

Discharge from Employment

61. In or around September of 2017, Ms. Baxter learned that Sgt. Tougas, the man who subjected her to repeated and severe sexual harassment and Officer Ospina, who sexually assaulted her, were expected to be promoted. Officer Ospina's promotion to sergeant would make him one of Ms. Baxter's direct supervisors. Sgt. Tougas's promotion would transfer him from an administrative position to a position with day-to-day supervision over Ms. Baxter.

62. As a result of the severe, pervasive, ongoing and inhumane harassment she suffered at the hands of defendants, defendant's failure to rectify the mistreatment, and particularly the fear that Officer Ospina and Sgt. Tougas would have even more authority over her employment, Ms.

Baxter was forced to cease work and take a medical leave on October 6, 2017.

63. During her medical leave, Ms. Baxter continued to complain about harassment at CFPD. Central Falls and CFPD failed to conduct a meaningful investigation of her complaints, and instead advised Ms. Baxter that she would be terminated if she did not return to work by April 16, 2018. Ms. Baxter was not terminated at that time because, on information and belief, defendants feared a lawsuit. She continued to complain to Central Falls officials about working conditions and benefits.

64. On or about March 12, 2019, Central Falls terminated Ms. Baxter's employment, purportedly for exceeding her medical leave of absence. The stated basis for the termination is a pretext for unlawful discrimination.

Claims for Relief

Count I

Harassment Based on Sex in Violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, as amended (“Title VII”)

65. Plaintiff incorporates the allegations contained within paragraphs 1 through 64 of the Complaint as though fully set forth herein.

66. By the foregoing acts and omissions, defendants, and each of them, denied plaintiff the privileges, benefits, and entitlements of her employment based on her sex and/or was treated more harshly, or disparately, and/or in a manner less favorable than her male counterparts.

67. The severe, pervasive and intentional conduct of her co-workers and superiors constitutes a knowing violation of her protected federal rights.

68. As a result, the plaintiff has suffered and continues to suffer damages.

Count II

Retaliation Based on Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, as amended (“Title VII”)

69. Plaintiff incorporates the allegations contained within paragraphs 1 through 68 of the Complaint as though fully set forth herein.

70. Plaintiff engaged in a protected activity when she made complaints to her superiors concerning her belief that she was being discriminated against.

71. By the foregoing acts and omissions, defendants, and each of them, did retaliate against the Plaintiff by subjecting her to material and adverse conditions of employment and a hostile work environment.

72. As a result, the plaintiff suffered and continues to suffer damages.

Count III

Discrimination Based on Sex and Race in Violation of the Rhode Island Civil Rights Act, Act of 1990, R.I.G.L. § 42-112-1, *et seq.*, as amended (“RICRA”)

73. Plaintiff incorporates the allegations contained within paragraphs 1 through 72 of the Complaint as though fully set forth herein.

74. By the foregoing acts and omissions, defendants, and each of them, discriminated against plaintiff on the basis of sex and race in violation of RICRA.

75. As a result, the plaintiff suffered and continues to suffer damages.

Count IV

Discrimination on the Basis of Sex and Race in Violation of the Fair Employment Practices Act of the State of Rhode Island, R.I.G.L. § 28-5-7, *et seq.*, as amended (“RI-FEPA”)

76. Plaintiff incorporates the allegations contained within paragraphs 1 through 75 of the Complaint as though fully set forth herein.

77. By the foregoing acts and omissions, defendants, and each of them, discriminated against plaintiff in employment on the basis of sex and race in violation of FEPA.

78. As a result, the plaintiff suffered and continues to suffer damages.

Count V

Intentional Infliction of Emotional Distress

79. Plaintiff incorporates the allegations contained within paragraphs 1 through 78 of the Complaint as though fully set forth herein.

80. By the foregoing acts and omissions, defendants, and each of them, intentionally inflicted emotional harm on plaintiff.

81. As a direct and proximate result of the defendants’ actions, plaintiff has suffered and will continue to suffer severe mental anguish, humiliation, pain, and emotional distress.

Count VI

Outrage

82. Plaintiff incorporates the allegations contained within paragraphs 1 through 81 of the Complaint as if fully set forth herein.

83. By the foregoing acts and omissions, defendants, and each of them, engaged in outrageous conduct.

84. As a direct and proximate result of the defendants' actions, plaintiff has suffered and will continue to suffer severe mental anguish, humiliation, pain, and emotional distress.

Wherefore, plaintiff prays as hereinafter set forth.

Prayer for Relief

WHEREFORE, plaintiff respectfully requests that this Court enter judgment in her favor and against the defendants as follows:

- (1) Order that the defendants cease all discriminatory practices and undergo appropriate training in order to ensure the eradication of all unlawful discriminatory conduct;
- (2) Award the Plaintiff back pay, front pay, costs, attorneys fees, and interest;
- (3) On all claims, award plaintiff compensatory and punitive damages as allowed by the law;
- (4) On all claims, award plaintiff interest on all amounts so awarded as allowed by law;

- (5) Grant such other and further relief as the Court deems just and proper.

Plaintiff,
By her attorney,

/s/ Marc Gursky
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Jury Trial Demand

Plaintiff demands a trial by jury on all issues so triable

Plaintiff,
By her attorney,

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